

REMARKS

The following remarks are made in response to the Restriction Requirement of February 17, 2010. Applicants respectfully traverse the restriction requirement with respect to the examination of Groups I and II as identified by the Examiner, as Applicants contend that the inventions are not independent and distinct and that examination does not present a serious burden to the Examiner. The Examiner's reconsideration is respectfully requested in view of the following remarks.

The Examiner imposes a restriction requirement requiring an election for examination on the merits between:

Group I, Claims 1-5, drawn to an anode active material; and

Group II, Claims 6-10, drawn to a method for preparing an anode active material.

The Examiner states that the Group I is separate from the other groups because it does not contain a special technical feature that defines a contribution over the prior art *a posteriori* because of lack of novelty or inventive step in view of Armata et al. (U.S. Patent No. 7,037,581, hereinafter "Armata"). (Detailed Action dated February 17, 2010, p. 2) Applicants respectfully traverse for at least the reasons detailed below.

First, because independent claim 5 recites a method for preparing an anode active material for a lithium secondary battery, the Applicants respectfully assert that claim 5 should be included in Group II.

Second, because the anode active material of claim 1 is distinct from the negative electrode active material of Armata, claim 1 is novel and has inventive step over Armata. Claim 1 recites an anode active material comprising a complex composed of ultra-fine Si phase particles and an oxide surrounding the Si phase particles, and a carbon material. In an embodiment, the oxide surrounding the Si phase particles originates from a material having an absolute value of oxide formation enthalpy (ΔH_{for}) greater than that of silicon dioxide. (Specification, p. 6, lines 9-12) Thus the oxide disclosed by the Applicants is distinct from silicon dioxide.

Armata discloses a negative electrode material comprising a composite in which silicon crystallites are dispersed in silicon dioxide, wherein the composite is coated with carbon. (Armata, col. 4, lines 22-24)

The Applicants respectfully assert that a complex comprising an oxide surrounding Si phase particles is distinct from a composite in which silicon crystallites are dispersed in silicon dioxide.

Therefore claim 1 is novel and has inventive step over Armata.

Also, concurrent examination of claims 1-10 would not present a serious burden to the Examiner. MPEP section 803 states, “[i]f the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.” [Emphasis added].

Accordingly the restriction requirement as to Groups I and II is submitted as being improper because claim 1 defines over Armata and there would not be a serious burden for concurrent examination of claims 1-10. Accordingly, Applicants respectfully assert that Groups I and II should be concurrently examined and respectfully request that the requirement for restriction of Groups I and II be withdrawn.

Conclusion

Applicants submit that the foregoing election is fully responsive to the Restriction Requirement dated February 17, 2010. The Applicants hereby reserve the right to file a divisional application for any non-elected subject matter in this application. Should the Examiner have any questions, the Examiner is encouraged to contact the undersigned at the telephone number indicated below.

Applicants hereby petition for any necessary extension of time required under 37 C.F.R. 1.136(a) or 1.136(b), or any other necessary fee(s), which may be required for entry and consideration of the present Reply.

If there are any associated or additional charges with respect to this Response, please charge them to Deposit Account No. 06-1130 maintained by Applicants’ attorney.

Appl. No. 10/566,344
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Respectfully submitted,

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